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E. ROBERT SEA

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 48 Original

STATE OF MISSISSIPPI,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION TO FILE COMPLAINT, COMPLAINT AND APPLICATION FOR STAY ORDER AND BRIEF IN SUPPORT OF MOTION, COMPLAINT AND APPLICATION FOR STAY ORDER

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. ..... Original

STATE OF MISSISSIPPI,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT AND FOR STAY ORDER

The State of Mississippi, appearing herein through Albioun F. Summer, its Attorney General, acting in pursuance of the authority and powers vested in him by Article 6, Section 173 of the Mississippi Constitution, respectfully states:

1. A portion of the boundary between the States of Arkansas and Mississippi common to the County of Chicot, Arkansas, and the County of Washington, Mississippi, is in dispute.

2. This boundary dispute between the States mentioned is subject to the exclusive original jurisdiction of the Supreme Court of the United States.

3. An action is presently pending in the Chancery Court of Chicot County, Arkansas entitled "Arkansas Land

& Cattle Company v. Anderson-Tully Company et al., Civil Action No. 10,177," wherein as shown by Exhibit "B" annexed to the attached complaint, Complainants in said civil action are claiming ownership of a portion of lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Mississippi under its inherent sovereignty.

WHEREFORE, the State of Mississippi respectfully prays that this Honorable Court take original jurisdiction and grant to the plaintiff leave to file its complaint in this Court, and that this Honorable Court issue an Order directed to the Chancery Court of Chicot County, Arkansas, placing in abeyance all proceedings in the action entitled "Arkansas Land & Cattle Company v. Anderson-Tully Company et al., Civil Action No. 10,177," pending the conclusion and determination of the matter set forth in this complaint, and further prays for such orders and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

ALBIOUN F. SUMMER
Attorney General
State of Mississippi
Jackson, Mississippi 39200
DELOS H. BURKS
Deputy Attorney General
State of Mississippi
Jackson, Mississippi 39200
MITCHELL EMMETT WARD
Special Counsel
To the Attorney General
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Vicksburg, Mississippi 39180

COMPLAINT AND APPLICATION FOR STAY ORDER

The State of Mississippi, appearing herein through A. F. Summer, its Attorney General, acting pursuant to the authority and powers vested in him by Article VI, Section 173 of the Constitution of Mississippi, institutes this original action against the State of Arkansas, and makes parties hereto the following citizens of the State of Arkansas; namely, Winthrop Rockefeller, Governor, and Joe Purcell, Attorney-General of the State of Arkansas, and J. L. Myatt, Minnie Mae Myatt, John W. Hancock, Mary Lucille Hancock, Rank Ramsey, Leona Mae Ramsey, Robert M. Bradley, Rita Jean Bradley, Billie E. Elliott, and Patricia Ann Elliott, a co-partnership doing business as Arkansas Land & Cattle Company, and Ann Smith Fenton.

I.

The original jurisdiction of this court is invoked under Article III, Section 2 of the Constitution of the United States and Par. (a) (1), Section 1251, Title 28 United States Code Annotated (June 25, 1948), c.646, 62 Stat. 927.

II.

The State of Mississippi was admitted into the Union of the United States of America by the Act of Congress found in the United States Statutes at Large, vol. 3, chap. 23, page 348, approved March 1, 1817, the boundaries of the state being described as follows:

> "Beginning on the River Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Wash-

ington (Alabama); thence due south to the Gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl River with Lake Borgne; thence up said river to the 31st degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning."

III.

Arkansas was admitted to the Union June 15, 1836 (5 Stat. at L. 50, 51, chap. 100), by an act of Congress which as to its boundaries, provided:

"Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the state of Missouri; and from thence to be bounded on the west, to the north bank of Red river, by the lines described in the first article of the treaty between the United States and the Cherokee Nation of Indians west of the Mississippi, made and concluded at the city of Washington on the 26th day of May, in the year of our Lord one thousand, eight hundred and twenty-eight; and to be bounded on the south side of Red river by the Mexican boundary line, to the northwest corner of the state of Louisiana; thence east, with the Louisiana state line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning."

IV.

The effect of this legislation as interpreted by the Supreme Court of the United States in the case of *Arkansas* v. *Mississippi*, 250 U.S. 39, 39 S. Ct. 422, 63 L. Ed. 832,

was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the common boundary between the two States from the South boundary line of the State of Tennessee on the north to the North boundary of the State of Louisiana on the South.

V.

Under the law of Arkansas, the State of Arkansas owns the bed of the Mississippi River to the boundary line of the States of Arkansas and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said States. The Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state.

VI.

Prior to 1935 the Mississippi River, in the reach between Latitude 33° 15′ N. and Latitude 33° 30′ N., meandered through a series of "horse-shoe" bends known as the "Greenville Bends". These bends were opposite and upstream from Greenville, Mississippi. The land mass on the right descending bank was part of Chicot County, Arkansas. The land mass on the left descending bank was part of Washington County, Mississippi. Navigation followed the sailing channel or Thalweg of the Mississippi River as it coursed around the peninsulas in these bends. Prior to 1935, Carter Point, located in the Greenville Bends was an elongated peninsula in Washington County, Mississippi with the Mississippi River flowing around it in a generally southwesterly, westerly, southerly, easterly and northeasterly direction.

VII.

In the early 1930's, the United States of America, through the Mississippi River Commission, an agency

created by the United States of America and staffed by the United States Engineers, after intensive study of the Mississippi River and its flood control problems, as well as that of navigation, concluded that a series of cutoffs should be constructed at various points on the Mississippi River between Cairo, Illinois, and to a point north of the City of Baton Rouge, Louisiana. The general overall purpose of such cutoffs was to eliminate bottlenecks which hampered the runoff of the waters during flood stages and to speed up the flow, thereby reducing the danger of floods and also permitting additional stabilization of the levee system then in process of construction. Some 15 of these cutoffs were subsequently made.

VIII.

In 1933 the United States Engineers dredged a pilot channel across the neck of Point Chicot or Archer Island immediately south and downstream of Carter Point. The Mississippi River adopted this channel and scoured out a new channel known as Leland Cutoff Channel and thereafter abandoned its former course around Point Chicot.

In 1935 the United States Engineers dredged a pilot channel across the narrow neck of Carter Point, Mississippi, and again the Mississippi River adopted this pilot channel scouring out a new channel known as Tarpley Cut-Off Channel. The "plug" in the dredged Tarpley Cut-Off Channel was dynamited in June of 1935 and within 90 days thereafter all navigation had ceased to follow the old tortuous course around Carter Point through Spanish Moss Bend and had adopted the much shorter reach created by the Tarpley and Leland Cut-Offs.

The Refuge Ark-Miss Quadrangle Edition of 1939 shows the area in question and is attached hereto as Exhibit "C".

IX.

The change in the Mississippi River as it adopted Tarpley Cut-Off was avulsive in nature and as a consequence of this change the state line between Mississippi and Arkansas became fixed in the last sailing channel at the time the river ceased to be a live flowing river following the avulsion.

X.

Since said avulsion, litigation has developed between owners of riparian lands on Carter Point, Mississippi, and the owners of land in Arkansas. Anderson-Tully Company, a corporation having large land holdings in both Mississippi and Arkansas is the owner of Carter Point, Mississippi, and has had to seek the aid of the U. S. District Court of the Northern District of Mississippi to defend its title to a portion of its riparian lands in Center Point. Title was confirmed in Anderson-Tully Company in that certain cause in said Court styled "Anderson-Tully Company v. Dr. J. M. Walls et al. No. GC 659" as shown by the Court's opinion in 266 Federal Supplement 804 (1967). Notwithstanding said decision that the state line was fixed in the abandoned Spanish Moss Bend, other Arkansas owners of riparian lands opposite and contiguous to Carter Point, Mississippi, are asserting title to Carter Point lands by claiming that the true location of the state line is further east and lies between Carter Point and Luna Bar as shown on said Exhibit "B". The old channel has filled up with alluvium from the head of Tarpley Cut-Off between Island 82 and Carter Point, on both sides of Luna Bar and is filling between Carter Point and Leland Neck on the south. The location of the state line will thus become progressively more difficult to determine. Disputes as to the state boundary have arisen between law enforcement officers of the State of Mississippi and trespassers and other law vio-

lators who assert that portions of Carter Point and its accretions are located in the State of Arkansas. This contention has been raised as a defense in criminal actions in the past and will surely be pled in the future. Uncertainty as to collection of taxes, enforcement of criminal laws and ownership of land and minerals in the area make it desirable that the state boundary be fixed and determined by this Court. Conflicting decisions by the Courts of Mississippi and Arkansas as to this boundary, as set out supra, add to this confusion.

XI.

In the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Arkansas in the area involved becomes of major and substantial significance to the respective states, in view of the great value of the lands involved, the necessity of determining the limits of each state's respective criminal jurisdiction and the fixing of the state boundary line for purposes of taxation. Heretofore, it has not been necessary to determine with preciseness the exact location of such boundary line.

XII.

The property rights and the solemnity of the boundary of the State of Mississippi are inextricably involved in the private litigation thus instituted and pending in the Chancery Court of Chicot County, Arkansas, and said Court is not the forum proper to such determinations. Nor is the State of Mississippi required to submit its title to said Court, nor should it be. The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties and it alone has the power to fix and determine the boundary lines herein set forth. The suit of "Arkansas Land & Cattle Company,

et al. v. Anderson-Tully Company" should be stayed by Order of this Court until a final judgment herein can be had, and application is hereby made by the State of Mississippi for an Order to be issued by this Court, directed to the Chancery Court of Chicot County, Arkansas, staying all proceedings in said suit.

XIII.

The jurisdiction of the Supreme Court of the United States in boundary disputes between States is exclusive and original and accordingly, it is appropriate that the suit of "Arkansas Land & Cattle Company, et al. v. Anderson-Tully Company" be stayed, and all parties thereto be served with copy of the Stay Order herein applied for, and be given the opportunity to assert such interests as they may have in this action.

WHEREFORE, PREMISES CONSIDERED,

Complainant prays:

1. That process issue herein to all parties as required by law.

2. That an order be issued promptly to the Chancery Court of Chicot County, Arkansas, staying any further proceedings in the suit of "Arkansas Land & Cattle Company, et al. v. Anderson-Tully Company", Civil Action No. 10,177, on the docket of said Court, until final judgment has been rendered herein or until further order of this Court.

3. That on final hearing hereof, the western boundary line of the State of Mississippi in the abandoned bed of the Mississippi River between the upstream end of Tarpley Cut-Off around Carter Point to the downstream end of Tarpley Cut-Off as of June 1935, and since, be fixed and determined.

4. That the claim of right and title asserted by Winthrop Rockefeller, Governor, and Joe Purcell, Attorney-General of the State of Arkansas, and J. L. Myatt, Minnie Mae Myatt, John W. Hancock, Mary Lucille Hancock, Rank Ramsey, Leona Mae Ramsey, Robert M. Bradley, Rita Jean Bradley, Billie E. Elliott, and Patricia Ann Elliott, a co-partnership doing business as Arkansas Land & Cattle Company and Ann Smith Fenton, in and to such Mississippi lands as fixed and determined herein be herewith canceled and forever held for naught.

And for such other and further relief, general or special, as may be meet and proper.

Respectfully submitted,

ALBIOUN F. SUMMER
Attorney General
State of Mississippi
DELOS H. BURKS
Deputy Attorney General
State of Mississippi
MITCHELL EMMETT WARD
Special Counsel
To the Attorney General
State of Mississippi

BRIEF OF THE STATE OF MISSISSIPPI IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE ORIGINAL SUIT AND FOR STAY ORDER

OPENING STATEMENT

As set forth in the Motion with Complaint annexed herein filed by the State of Mississippi, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Arkansas common with the State of Mississippi.

I.

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Article III, Section 2, Clause 1 of the Constitution:

> In "all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

As set forth in Section 1251, Title 28, U.S.C.A. (June 25, 1948), c. 646, 62 Stat. 927, Paragraph (a) (1):

> "(a) The Supreme Court shall have original and exclusive jurisdiction of:
>
> "(1) All controversies between two or more states;"

II.

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Mississippi and Arkansas.

The value of the property involved is great. The rights of the State of Mississippi, its citizens and property owners are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the States, and determine finally the rights of the parties. See *Florida* v. *Georgia*, 17 How. 478 (1855); *Oklahoma* v. *Texas*, 258 U.S. 574, 66 L. Ed. 771, 42 S. Ct. 406 (1922); and *Texas* v. *Florida*, 59 S. Ct. 563, 306 U.S. 398, 83 L. Ed. 817, 121 ALR 1179 (1939).

III.

POWER TO STAY

In the aid of its original jurisdiction, the Supreme Court has the power and authority to issue Stays not only inherently but also by Sec. 1651, Title 28 U.S.C.A. (June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, c. 139, § 90, 63 Stat. 102) which reads:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all Writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

See *Ex parte Republic of Peru*, 318 U.S. 578, 87 L. Ed. 1014, 63 S. Ct. 793 (1943).

As stated in *Landis* v. *North American Company*, 299 U.S. 248, 81 L. Ed. 158, 57 S. Ct. 163 (1936):

"Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants."

Respectfully submitted,

ALBIOUN F. SUMMER
Attorney General
State of Mississippi
DELOS H. BURKS
Deputy Attorney General
State of Mississippi
MITCHELL EMMETT WARD
Special Counsel
To the Attorney General
State of Mississippi

PROOF OF SERVICE

The undersigned, of counsel for the State of Mississippi herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on October 27, 1970, I served copies of the foregoing Motion of the State of Mississippi for Leave to File Original Action with Complaint and Brief annexed, by depositing the same in a United States mailbox with first class postage prepaid, addressed to:

HON. WINTHROP ROCKEFELLER
Governor of the State of Arkansas
Little Rock, Arkansas 72201

HON. JOE PURCELL
Attorney General of the
State of Arkansas
Department of Justice Building
Little Rock, Arkansas 72201

MR. WILLIAM DREW
of Drew and Holloway
Attorneys at Law
Lake Village, Arkansas 71653
Attorneys of Record for Arkansas
Land and Cattle Company, et al.,

such being their post office addresses.

Mitchell Sturgis Brand

Of Counsel for the State of Mississippi

EXHIBIT A

STATE OF ARKANSAS
COUNTY OF CHICOT
IN THE CHANCERY COURT
CAUSE NUMBER 10,177
ARKANSAS LAND AND CATTLE COMPANY,
PLAINTIFF

VS.

ANDERSON-TULLY COMPANY, CHICOT LAND
COMPANY, INC., J. C. SMITH AND
GEORGE PINE,
DEFENDANTS

Complaint in Equity

Comes the plaintiff, Arkansas Land and Cattle Company, and for its cause of action against the defendants, states as follows:

1.

That plaintiff is a partnership, composed of J. L. Myatt and Minnie Mae Myatt, his wife, John W. Hancock and Mary Lucille Hancock, his wife, Rank Ramsey and Leona Mae Ramsey, his wife, Robert M. Radley and Rita Jean Radley, his wife, Billie E. Elliott and Patricia Ann Elliott, his wife, with its principal place of business in Lake Village, Chicot County, Arkansas.

2.

The defendant, Anderson-Tully Company, is a corporation, chartered under the laws of the State of Michigan with its principal place of business in Memphis, Tennessee.

3.

The defendant, Chicot Land Company, Inc. is a corporation chartered under the laws of the State of Arkansas with its principal place of business in Lake Village, Arkansas.

The defendant, George Pine, and defendant, J. C. Smith, are both residents of Lake Village, Chicot County, Arkansas.

5.

All of the land hereinafter referred to is located wholly within Chicot County, Arkansas.

6.

A controversy has arisen between the plaintiff and defendants relative to the following lands:

> The South Half (S½) of Section 9 and the North Half of Section Sixteen (16), with all accretions thereto, all in Township Fifteen South, Range One West.

7.

Plaintiff is the owner in fee simple of the above described lands, an abstract of title to said lands being attached hereto, marked Exhibit "A", and made a part hereof as though set out herein word for word.

8.

The defendant, Anderson-Tully Company, is asserting that it is the owner of the captioned lands and accretions thereto, by virtue of a deed of conveyance from C. W. Hunter Company, dated October 15, 1962, recorded with the official recorder of deeds in Washington County, Mississippi in Book 856, Page 137, said deed with other de-

scriptions of land in Washington County, Mississippi, containing the following words:

> "It is the intention of this description to include, in addition to lands on the mainland on the East side of the present channel of the Mississippi River, and the same are hereby included in said description, the following lands on the West side of the present channel of the Mississippi River;
>
> All of that tract of land, including Luna Bar situated in Washington County, Mississippi, and bounded on the East by the present channel of the Mississippi River, on the South and West by the abandoned Spanish Moss Bend and bounded on the North by the boundary line between the States of Mississippi and Arkansas."

The defendant, Anderson-Tully Company, by virtue of the aforesaid description asserts it is the owner of plaintiff's lands, and that said lands are accretions to the State of Mississippi.

9.

The defendant, Chicot Land Company, Inc., is asserting a claim of right to occupy plaintiff's lands by virtue of an Exclusive License for hunting and fishing dated August 18, 1964 and through its employees, George Pine and J. C. Smith, attempt to evict and eject plaintiff's authorized invitees or employees from the use and enjoyment of plaintiff's land.

10.

That unless restrained from so doing, the defendants, jointly and severally, will continue to harass and annoy the plaintiff, its agents, servants, employees and guests in

the use and enjoyment of their land, for which the plaintiff has no adequate remedy at law.

11.

That the title to plaintiff's lands, with accretions thereto, should be quieted in fee simple and any claims that the defendants, jointly or severally, be quieted, removed and adjudged to be invalid.

WHEREFORE, plaintiff prays:

(1) That the title to their lands be forever quieted in them in fee simple absolute; that the defendants' claims be quieted, removed and adjudged to be invalid;

(2) That an injunction issue herein restraining the said defendants, jointly and severally, and their successors in title, from interfering with plaintiff's use and enjoyment of their land or from trespassing thereon;

(3) For all costs herein expended.

Arkansas Land and Cattle Company,
Plaintiff
By William H. Drew
Drew & Holloway
P.O. Box 387
Lake Village, Arkansas

VERIFICATION

I, William H. Drew, attorney for the plaintiff herein, on oath state that the facts in the foregoing "Complaint in Equity" are true and correct to the best of my information, knowledge and belief.

William H. Drew

Subscribed and sworn to before me this ..... day of November, 1966.

.....
Notary Public

My Commission Expires: February 20, 1968.

Filed Nov. 21, 1966, Clara Henry, Clerk, by Elizabeth McCaskill, D.C.

EXHIBIT B

IN THE CHANCERY COURT OF CHICOT COUNTY, ARKANSAS

No. 10,177
ARKANSAS LAND AND CATTLE COMPANY
PLAINTIFF

VS

ANDERSON-TULLY COMPANY, CHICOT LAND COMPANY, INC.,
J. C. SMITH AND GEORGE PINE
DEFENDANTS

Motion to Dismiss

Come Defendants, Anderson-Tully Company, Chicot Land Company, Inc., J. C. Smith and George Pine, and move the Court dismiss the Complaint with prejudice and for cause state

1. That the lands in issue are not in the State of Arkansas and therefore this Court is without jurisdiction to adjudicate title to or right to possession thereof; or, in the alternative,

2. The Complaint alleges no chain or claim of title or right to possession of the lands in issue, ie Luna Bar,

said lands not being within the description of lands in the Plaintiff's chain of title as exhibited to its Complaint and hence no ground for relief as to such lands is stated.

WHEREFORE, Defendants move the Court dismiss, with prejudice, the Complaint of the Plaintiff and for its costs herein expended.

Respectfully Submitted

William S. Arnold
of Arnold, Hamilton & Streetman
and
M. E. Ward
of Dent, Ward, Martin & Terry
Attorneys for Movants

Filed by:
Arnold, Hamilton & Streetman
Attorneys at Law
Box 828
Crossett, Arkansas
and
Dent, Ward, Martin & Terry
Attorneys at Law
Merchants Bank Building
Vicksburg, Mississippi
Of Counsel

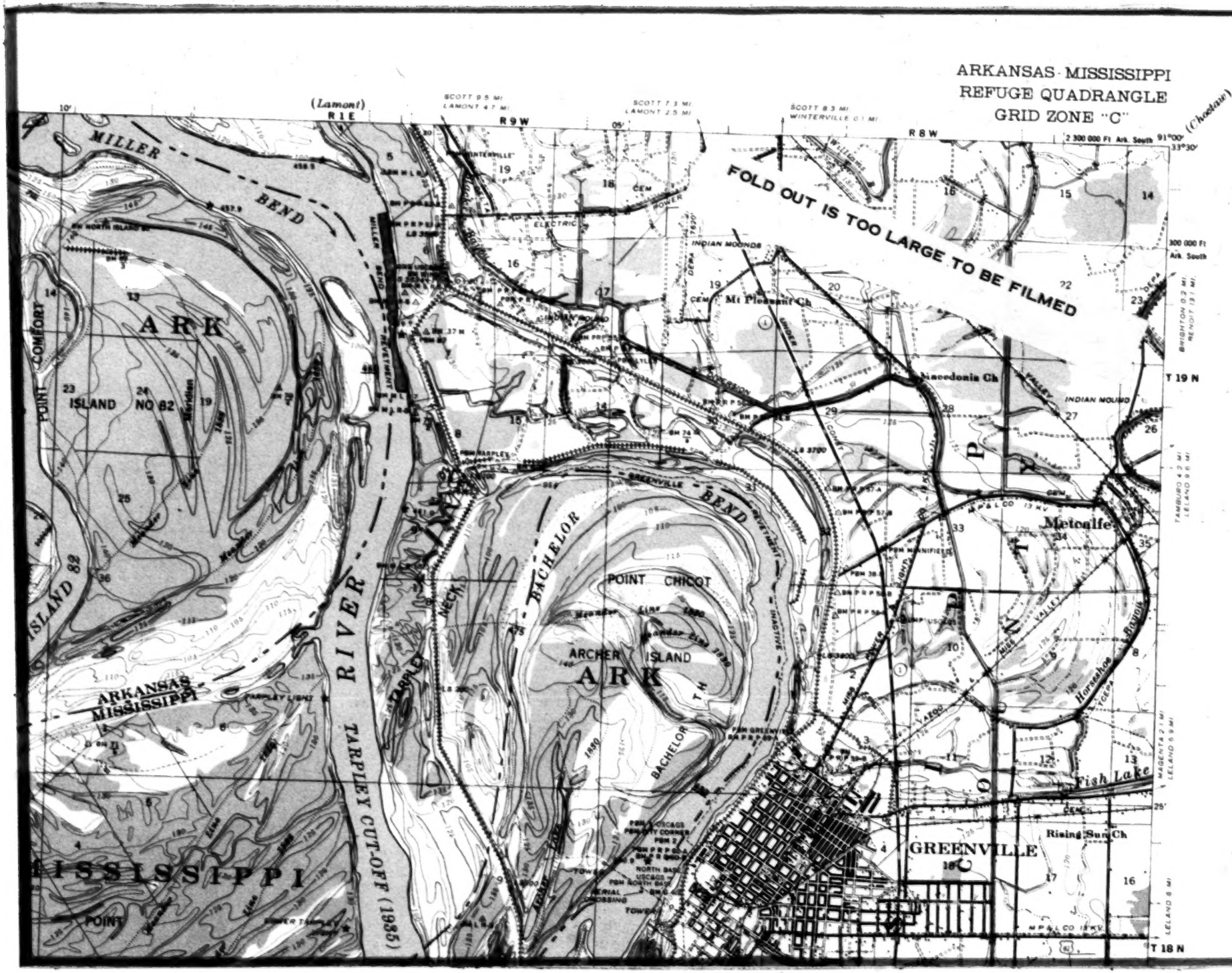
CERTIFICATE OF SERVICE

I, William S. Arnold, as an attorney of record for Movants in the above styled action, hereby certify that a copy of the foregoing MOTION TO DISMISS was duly served by mailing a copy thereof to Mr. William H. Drew, Drew & Holloway, Lake Village, attorney of record for Plaintiff, on the ..... day of ....., 19.....

William S. Arnold

EXHIBIT C

(Attached to inside back cover)


ARKANSAS-MISSISSIPPI
REFUGE QUADRANGLE
GRID ZONE "C"
FOLD OUT IS TOO LARGE TO BE FILMED
MILLER BEND
ARK
ISLAND NO 82
POINT COMFORT
MISSISSIPPI
ARKANSAS
MISSISSIPPI
TARPLEY CUT-OFF (1935)
POINT CHICOT
ARCHER ISLAND
ARK
BACHELOR
GREENVILLE BEND
GREENVILLE
Mt Pleasant Ch
Macedonia Ch
Metcalfe
Fish Lake
Rising Sun Ch
INDIAN MOUNDS
T 19 N
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R 1 E
(Lamont)
(Choctaw)